HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 388 of 2004 (M/S)
Saurabh Kandari

VS.
Govind Ballabh Pant University
of Agriculture & Technology,
Pant Nagar, District Nainital & another.

Approved for reporting

~~Not approved for reporting~~

Date of decision 16.8.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
WRIT PETITION NO.388/04(M/S)

Saurabh Kandri. …….. Petitioner.

Versus.

Govind Ballabh Pant University
Of Agriculture & Technology,
Pant Nagar, ditrict Nainital & another….. Respondents.

Sri U.K. Uniyal, learned counsel for the petitioner.
Sri Shobhit Sahari, Advocate for respondent.

16.08.2004.

Hon'ble Rajesh Tandon, J.

Heard Sri U.K.Uniyal, Sr. Advocate, assisted by Sri Sharat Sharma for the petitioner and Sri Rajendra Dobhal.

By the present writ petition the petitioner has prayed for order or direction in the nature of certiorari quashing the order dated 29.05.2004 passed by respondent No.2, Registrar G.B.Pant University of Agriculture and Technology, Pant Nagar, district Nainital.

Brief facts giving rise to the present writ petition are that the petitioner appeared in the II semester of Bachelor of Technology (Civil Engineering) of G.B.Pant University of Pantnagar bearing I.D.No.295 of 2002 of 2002-2003 of the Batch of 2002 of the G.B.Pant University, Pantnagar.In the earlier writ petition No. 896 of 2003 the petitioner has prayed for permitting to participate in the examination of II semester of Bachelor of Technology of G.B.Pant University, Pant Nagar. Simultaneously the petitioner has also prayed for prosecuting his studies for the III semester for which he has has already deposited the fee etc. As will appear from the facts of the case that the petitioner in the I semester obtained 4.946 average marks and in the II semester his Grade point average was 4.978. The cumulative grade point average comes 4.962. The details are given below:

Marks obtained in First Semester:

	As per University		As per petitioner
Engg. Drawing	5.25	=	5.3
Mech. of Solids	5.0	=	5.0
Engg Math Ist	4.30	=	4.3
Principles of Electrical Engineering	5.25	=	5.6
Work programme	8	=	8
	_____		_____
GPA	4.946	=	5.04
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Marks obtained in First Semester:

	As per University		As per petitioner
Tech. Writing	5.25	=	5.3
Chemistry	5.0	=	5.0
Engg Math IInd	4.30	=	4.3
Physics	5.3	=	5.3
Wkorshop Practice.	5.275	=	5.3
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	4.978	=	4.99333
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CGPA As per University 4.962

As per petitioner. 5.01

According to the provisions of Academic Regulations if at the end of any semester during which the undergraduate student had been on academic probation and cumulative grade point average of both the semester is less than 5, he has a right of readmission. According to the case of the petitioner during the II semester he became ill in the final examination as a result of which he could not secure satisfactory marks in Mathematics II paper and, as such, he was kept on academic

probation during the II semester due to less marks in I semester in mathematics.

A counter affidavit has been filed stating therein that the petitioner is not entitled for the admission.

Relevant provision is quoted below:

“44(a) If any under graduate student fails to attain cumulative grade point average 5,000 at the end of academic year he shall be dropped from the University for poor academic performance with the right to petition for the demission. The following categories of first degree student shall, however, be finally dropped with no right to petition.

1. If any undergraduate student fails to attain a DGPA of 5,000 at the end of the first academic year, In case a student has been permitted to drop I or II semester of his 1 st academic year, his CGPA at the end of first two semesters of his stay in the University will be counter for this purpose.

2. If any undergraduate student fails to attain in CGPA of 5,000 in his second year onward”.

Clause (b) of the aforesaid Regulation 44 also provides that thrice chance will be given and even the Vice Chancellor has power to permit 4 th chance.

Regulation 49 also provides the power of readmission bythe Vice Chancellor. It reads as under:

“49(a) Any under graduate student fails to attain CGPA at the end of academic year he shall be dropped from the University for poor academic performance with right to petition for readmission. The following categories of first, degree student shall, however, finally dropped with no right to petition for readmission. The following categories of first, degree student shall, however, finally dropped with not right for readmission:

I. If any under graduate fails to attain a CGPA of 5,000 at the end of first academic year. In case a student has been permitted to

drop or II semester of his first academic year, his CGPA at the end of first two semesters of his stay in the University will be counted for his purpose.

II. If any under graduate student fails to attain a CGPA of 5,000 in his second year onwards.

(b) Any undergraduate student failing in the same course thrice shall be dropped from the University. In exceptional circumstances,

However, the Vice Chancellor may permit a fourth charge on the recommendation of the Advisor and Dean concerned".

A reference is made to the Special Appeal No.01 of 2004 G.B.Pant University and Technology Vs Bharat Bhusan where the Division Bench has referred Regulation 44 where the right of readmission has been given in case the petitioner fails to attain C.G.P.A. of 5.

The Division Bench has observed as under:

"Sub clause (1) of clause (a of Regulation 44 clearly provides that if any undergraduate student fails attain a CGPA of 5,000 out of 10,000 at the end of the first academic year, he shall be dropped with no right of petition for readmission. It further provides that in case the petitioner has been permitted to drop I or I semester of his I academic year, his CGPA at the end of first two semesters of his stay in the University will be counted for this purpose. Admittedly, the petitioner was not admitted in the first semester and was given admission in the second semester of 2000-2001. He was not permitted to drop in the semester of 2000-20001. Therefore, first two semesters of his stay in the University could be counted for the purpose of clause (1). Permitted to be dropped clearly means that he is permitted to break the continuity. Permission could be accorded only after the admission and continuity could be broken only after his dropping after admission. Therefore, interpretation put forward by the learned counsel for the appellant is misconceived. The said interpretation is not attracted in the facts of this case as admittedly the respondent was

admitted in the second semester of first year, therefore, his G.P.A. could be counter for the first year and CGPA is required more than half out of ten. The petitioner has secured in the second semester of first year 3.684 GPA that comes to more than 3.6 and if CGPA on this average is calculated it comes more than 6. Therefore, dropping of the respondent by counting the first two semesters of his stay in the University is not permissible in view of the facts of this case and the respondent could not be dropped. The reason for dropping of the respondent is contrary to provisions of Regulation44(a) and sub clause (1) of 4a).

While remitting the matter the Vice Chancellor it was expected that the right of readmission which has been provided under the academic regulation will be afforded to the petitioner, it appears that the Vice Chancellor has not applied his mind and the Registrar has passed the order without exercising the powers of readmission as contained under the academic regulation. It is a fit case where the Vice chancellor should have exercised his discretion in the light of the judgment as well as the judgment of the special appeal in the the writ petition as well as the judgment of the special appeal in the case of G.B. Pant University Vs Bharat Bhusan.

It appears that the order impugned dated 29.05.2004 is based on Regulation 30(3) and there has been no application of mind with regard to readmission as contained under Regulation 44 and 49. These Regulations have been framed in order to safeguard the interest of a student in the career building.

In the light of the aforesaid facts, Article 21 of ConstitUtion of India fully applies to the facts of the case.

In the case of Mohini Jain Vs State of Karnataka (1992)3 SCC page 666 right to education has been held to be flows directly from right to life. The observations of the Apex Court are quoted below:

“Right to life” is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified

enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual can not be assured unless it is accompanied by the right to education. The State government is under an obligation to make endeavour to proved educations facilities at all levels to its citizens.

The fundamental rights guaranteed under Part III of the constitution of India including the right to freedom of speech and expression and other rights under Article 19 can not be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The "right to education" therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The state is under a constitutional mandate

to provide educational institutions at all levels for the benefit of the citizens. The educational institution must function to the best advantage of the citizens. Opportunity to acquire education can not be confined to he richer section of the society".

"The University authorities are, therefore, required to adopt an atmosphere of reformative rather than a punitive so that students may reform themselves. IN the case A.S. Narayana Deekshitulu V. State of A.P. JT 1996 (3) s.c. 482 their Lordships of Hon'ble Supreme Court have relief upon a passage form Riguveda. It emphasized the divine qualities of a person should be forgiveness, compassion and service. The University adopts this idea the students will get moral support in their future career as rightly pointed out by the Apex court to the following effect:

"Before with others as you would with yourself. Look upon all the living beings as your friends, for in all of them there resides one soul. All are but a part of that universal soul. A person who believes that all his soul mates and loves them all alike never feels lonely. Divine qualities of such a person such as forgiveness, compassion and

service will make him lovable in the eyes of his associates. He will experience intense joy throughout his life."

The Yajurveda states:

मित्रस्या मा चक्षुषा सर्वाणि भूतानि समीक्षान्ताम । मित्रस्याहं चक्षुषा सर्वाणि भूतानि समिक्षे । भिप्रस्य चक्षुषा महे ।।

"May all beings look on me with the eyes of a friend. May I look on all beings with the eyes of a friend. May we look on one another with the eyes of a friend."

University authorities must follow the principal as enumerated in Bhagwat Geeta 916-2)

अहिंसा सत्यमकोधस्तयागः षान्तिरपैषुनम ।
दया भूतेष्वलोलुप्तवं मार्दवं हीरचापलम ।।

मन, वाणी और षरीर से किसी प्रकार भी किसी को कष्ट न देना, यथार्थ और प्रिय भाषण अपना अपकार करने वाले पर भी क्रोध का न होना, कर्मोमें कर्तापनके अभिमान का त्याग, अन्तःकरण की अपरति अर्थात चित्तकी चन्चलता का अभाव, किसी की भी निन्दादि न करना, सब भूतप्राणियों में हेतु रहित दया इन्द्रियों का विषयों के साथ संयोंग होने पर भी उनमें आसक्तिका न होना, कोमलता, लोक और षास्त्र से विरूद्ध आचरण में लज्जा और व्यर्थ चेष्टाओं का अभाव ।

Considering the aforesaid preposition of law the petition is sent back to the Vice Chancellor for exercising his powers in accordance with the Regulations in the interest of a candidate and not to penalize him from building his career.

The writ petition is disposed of accordingly. No order as to costs.

Dated: August 16 ,2004

S.S.Negi. **(RAJESH TANDON – J)**